

1 THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
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4
5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,)
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)
13)
14 Plaintiff,)
15)
16 vs.) 4:05-CV-00329-TCK-SAJ
17)
18 TYSON FOODS, INC., et al,)
19)
20 Defendants.)

21 - - - - -

22 MOTION FOR
23 PRELIMINARY INJUNCTION HEARING
24
25 BEFORE THE HONORABLE GREGORY FRIZZELL

26 VOLUME I
27 Daily Copy Transcript

28 February 19, 2008

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1 A P P E A R A N C E S

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1 scientists. And it strikes me, Your Honor, that
2 this court should let these agencies do their work.
3 They're not in here. Department of Health is not in
4 here as a party. Agriculture department is not in
5 here as a party. DEQ is not in here as a party. If 11:02AM
6 there was really this imminent and substantial risk
7 of harm in this watershed, the DEQ would have
8 stopped the application of poultry litter. DEQ
9 would have issued swimming advisories that haven't
10 been done. They would have stopped and written 11:02AM
11 letters to the well owners saying don't drink out of
12 your well water. We think it has bacteria in it and
13 that is a substantial risk to your health. No well
14 owners have received any such letters, and the
15 Department of Health would be conducting an 11:03AM
16 investigation into this public -- alleged public
17 health crisis, which, of course, they're not doing.
18 Finally, Your Honor, I would simply say the
19 courtroom is not the proper place to investigate the
20 public health crisis. That's the Department of 11:03AM
21 Health, and the courtroom is not the proper place to
22 conduct the TMDL study. Leave that with the EPA and
23 the DEQ. Let the real agencies that are designated
24 to do this work do their work. Your Honor, we ask
25 that the injunction be denied. Thank you, Your 11:03AM

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1 MR. BULLOCK: It's also beyond the scope.

2 I was getting it from two places here.

3 THE COURT: Sustained.

4 MR. ELROD: Your Honor, I guess my point is

5 that if that's the state's position, we've disposed, 11:03AM

6 perhaps, with a great deal of issues in this

7 lawsuit, if their position is that litter is not a

8 hazardous substance, then that's great.

9 THE COURT: It's just beyond the scope of
10 the testimony of this witness, I believe. 11:03AM

11 MR. BAKER: Just to be clear, Your Honor,

12 we have not said that poultry waste is not a

13 hazardous substance. We're talking RCRA now, solid

14 waste versus hazardous waste. Very different

15 concept. 11:03AM

16 THE COURT: You've educated me. I
17 appreciate that. I still frankly need some
18 education from both of you on that. It's an
19 interesting legal issue, but in any event, Mr.
20 Bullock's objection is sustained. 11:03AM

21 Q Dr. Taylor, in the conduct of your
22 investigation of the poultry industry, have you
23 become aware that most of the contracts, all of the
24 contracts offered by my client, Simmons Food, are
25 for at least seven years duration? 11:04AM

1360

1 you to address it. I'm not going to make a ruling
2 on it, but because at least right now, that is on
3 the forefront of my mind because as I referenced
4 before, without deciding at this juncture, just to
5 let everyone know the hills they have to climb, it
6 seems to me that under RCRA this is likely solid
7 waste. That's on one side.

01:31PM

8 On the other, in trying to follow the
9 application of the rules given to me and tested over
10 time, I don't know that I can give great weight, and
11 I think that's probably the way that one has to look
12 at it in terms of a motion for preliminary
13 injunction. I don't believe it is an exclusionary
14 device, and if you have any authority, Mr. Jorgensen
15 or Mr. Bullock in support of what I'm saying. Upon
16 reflection over the noon hour, in the context of a
17 motion for preliminary injunction, it goes to the
18 weight, so Mr. Jorgensen.

01:32PM

01:32PM

19 MR. JORGENSEN: In terms of your question
20 about authority, in our brief we set out in a
21 footnote that you're exactly right. In the context
22 of a bench hearing all of the Daubert standards
23 apply, but the court can hear it all and then decide
24 what weight to give it. You don't need to enter a
25 formal order excluding. You can choose not to rely

01:32PM

01:33PM